



wife, Angela R. Cruz.<sup>4</sup> The Cruz family informed Plaintiff that Jorge de la Cruz and his wife, Elena G. Cruz a/k/a Elena de la Cruz died intestate and were survived by their children, one of whom was Francisco Javier de la Cruz. As such, Francisco Javier de la Cruz was a presumptive heir of Jorge de la Cruz and Elena G. Cruz a/k/a Elena de la Cruz and was named in Schedule “G” of the Declaration of Taking as a joint owner of the Subject Property.<sup>5</sup>

3. On April 16, 2021, Defendant Valentina de la Cruz Alvarez informed the United States after being served via substitute service<sup>6</sup> that her brother, Francisco Javier de la Cruz, died intestate in 2017 in Tarrant County, Texas.<sup>7</sup> Ms. Alvarez submitted an affidavit of heirship detailing the heirs of her parents, Jorge de la Cruz and Elena G. Cruz a/k/a Elena de la Cruz.<sup>8</sup> In her affidavit of heirship, she stated that her brother, Francisco Javier de la Cruz, “died intestate and was survived by his wife, Rita de la Cruz, and his sisters and/or children.”<sup>9</sup>

4. Rita de la Cruz submitted an affidavit of heirship detailing the heirs of her late husband Francisco Javier de la Cruz.<sup>10</sup> According to her affidavit, Francisco de la Cruz was survived by his spouse, Rita de la Cruz, and two children, Joanna de la Cruz and Yvette de la Cruz.<sup>11</sup>

5. Based on the Affidavits of Heirship executed by Valentina de la Cruz Alvarez and Rita de la Cruz, it appears that Defendant Francisco Javier de la Cruz died intestate and was

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<sup>4</sup> Ex. 1. Warranty Deed, Document # 1976-92244, recorded in Volume 399, Page 32 of the real property records of Starr County, Texas, on October 28, 1976.

<sup>5</sup> See Tex. Est. Code Ann. § 201.001 (Vernon); Dkt. No. 53-1, p. 5.

<sup>6</sup> Dkt. Nos. 51 & 55.

<sup>7</sup> The United States notes that there is no record of Francisco Javier de la Cruz’s death filed in Starr County, Texas, where the Subject Property is located.

<sup>8</sup> Ex. 2. Affidavit of Facts Concerning the Identity of Heirs for the Estate of Elena G. Cruz a/k/a Elena de la Cruz and Jorge de la Cruz signed by Valentina de la Cruz Alvarez.

<sup>9</sup> *Id.* at 2.

<sup>10</sup> Ex. 3. Affidavit of Facts Concerning the Identity of Heirs for the Estate Francisco de la Cruz signed by Rita de la Cruz.

<sup>11</sup> *Id.*

survived by his wife, Rita de la Cruz, and children, Joanna de la Cruz and Yvette de la Cruz.<sup>12</sup>

6. Substitution is proper under Fed. R. Civ. P. 71.1(g) because Francisco Javier de la Cruz died intestate and his interest in the Subject Property is now represented by his surviving spouse, Rita de la Cruz, and children, Joanna de la Cruz and Yvette de la Cruz, as established by state law.<sup>13</sup> Joanna de la Cruz and Yvette de la Cruz were already named in Schedule “G” of the Declaration of Taking as presumptive heirs of Jorge de la Cruz.<sup>14</sup> As a result, this motion only seeks to substitute Rita de la Cruz for and in place of Defendant Francisco de la Cruz. Rita de la Cruz informed undersigned counsel that she does not oppose this motion.

7. Given that Francisco Javier de la Cruz is now deceased, his surviving spouse Rita de la Cruz should be substituted for and in place of Defendant Francisco Javier de la Cruz pursuant to Fed. R. Civ. P. 71.1(g).

8. Upon substitution of the party by Order of the Court, Plaintiff will provide formal notice to Rita de la Cruz in accordance with Fed. R. Civ. P. 71.1(d)(3). Plaintiff will also file an Amended Notice of Schedule G to reflect the appropriate parties of interest.

9. WHEREFORE, the United States files this Motion seeking to substitute Rita de la Cruz for and in place of Francisco Javier de la Cruz, deceased, as an interested party of the Subject Property.

#### **CERTIFICATE OF CONFERENCE**

On May 7, 2021, the United States sent a letter to all Defendants with known addresses, informing them that it intends to file this motion for substitution of party and that they should notify undersigned counsel by May 18, 2021, if they are opposed to the filing of said motion. To

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<sup>12</sup> See Exhibits 2 & 3.

<sup>13</sup> See Tex. Est. Code § 201.002(b)(3) (Vernon). According to Texas law, Francisco Javier de la Cruz’ surviving spouse inherited a 1/3 life estate interest in the subject property with the remainder descending to his children.

<sup>14</sup> Dkt. No. 53-1, p. 6.

date, no one has notified undersigned counsel of their opposition to the motion. However, because the United States was unable to serve all named defendants due to unknown addresses, this motion is deemed opposed. Rita de la Cruz does not oppose this motion.

Respectfully submitted,

**JENNIFER B. LOWERY**

Acting United States Attorney  
Southern District of Texas

By: *s/ N. Joseph Unruh*

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**CERTIFICATE OF SERVICE**

I, N. Joseph Unruh, Assistant United States Attorney for the Southern District of Texas, do hereby certify that on May 19, 2021, I mailed a true and correct copy of the foregoing document via first class mail to the all parties still remaining in this case.

By: *s/ N. Joseph Unruh*  
**N. JOSEPH UNRUH**  
Assistant United States Attorney